



October 6, 1999

Mr. Duncan R. Fox
Assistant Chief, Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR-2841

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129172.

The Texas Department of Public Safety ("DPS") received a request for any written statement or transcription of any recorded statement by Major L. A. Reinhart, a DPS officer who was involved in an automobile accident. The requestor also asks for a copy of the DPS motor vehicle accident report which you state you will release. You claim that the remaining information requested is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the information submitted. You assert that section 552.103 of the Government Code excepts from disclosure the requested information. Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

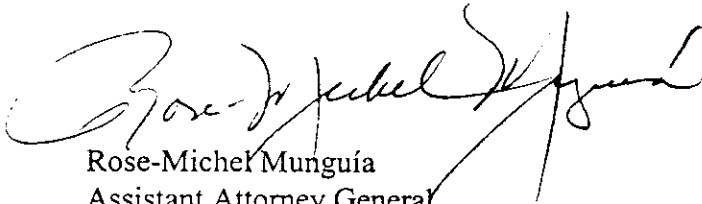
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance. You have submitted to this office a copy of the letter from Ms. Sandra Archibald who was allegedly injured and sustained property damage in the accident in which Major Reinhart was involved. Ms. Archibald's letter indicated that she is making a claim to the DPS for compensation for injuries and damage to her automobile. You state the Ms. Archibald's letter is a notice of claim letter that complies with the notice requirements of the TTCA. We have reviewed the records and determined that DPS has met its burden of showing that litigation is reasonably anticipated and that the information at issue relates to the anticipated litigation. The requested information may be withheld pursuant to section 552.103(a).

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, if the records contain information that is confidential by law, you must not release such information even at the conclusion of the litigation. Gov't Code §§ 552.101; .352.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

Mr. Duncan R. Fox

RMM/nc

Ref.: ID# 129172

cc: Mr. Jason E. Fohn
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